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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,701	12/28/2001	Sandra A. Richlen	659-920	5371

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EXAMINER	
REICHLE, KARIN M	

ART UNIT	PAPER NUMBER
3761	12

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/032,701	RICHLEN ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 December 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 December 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3,6,8-11* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Drawings

2. The drawings are objected to because in Figures 17 and 18 the extraneous text should be avoided, i.e. such should be included in the detailed description instead. Why are Figures 4, 5, 6, 7, 8, and 9 crosshatched? They are not described as cross sections. In Figure 3, the lines and arrows from 145 should be dashed to indicate underlying structure. Where is the structure as set forth on page 12, lines 4-7 shown? The right hand side of Figure 14 is unclear. The lines from 51 should be dashed. In Figures 12 and 13, the numeral 128 should denote the same surface as shown in Figures 3-9B. In Figures 15-16, a line each numeral, e.g. 45 and 49, to the structure it denotes should be provided. Also the lines from and lines forming underlying structure, e.g. the lines from 14 and 16, elastics 36 and 38, sides 74 and layer 72, should be dashed. In Figure 16, the leg elastics are denoted both 36 and 38. In Figure 16, on the right side, the line from 37 should be dashed. Where is 70 as set forth on page 33, lines 30-31 shown? A proposed drawing correction or corrected drawings are required in reply to the Office action to

avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

3. The abstract of the disclosure is objected to because the legal terminology, i.e. "comprises", should be avoided. Correction is required. See MPEP § 608.01(b).

4. The use of the trademark LYCRA(R)(page 19, lines 14-15) and Velcro(page 39, line 9) and lycra(page 37, line 4) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with a symbol but not both.

5. The disclosure is objected to because of the following informalities: The description in the paragraph bridging pages 11-12 is confusing, e.g. in Figure 7, the apex is described as both 154 and 146 and described as rounded and sharp, i.e. it appears one is the apex from the front side and one is the apex from the side but such should be clarified. Element 53 is inconsistently described, i.e. as tabs on page 16, line 8, and as an end portion on page 29, line 10. Note on page 28, line 11, 47 is described as denoting the tab members. Consistent terminology and numerals should be used to describe the same feature throughout the description to avoid confusion.

Appropriate correction is required.

Claim Objections

6. Claims 2-10, 12-20, 23-30 and 32-40 are objected to because of the following informalities: In claim 5, line 4, "the other" should be --another--. In claim 7, "is broken" should be--is breakable--. In claims 2-10 and 12-20, line 1, "invention" should be --absorbent garment--. In claims 23-30 and 32-40, line 1, "invention" should be --method--. Appropriate correction is required.

Claim Language Interpretation

7. The directional terms are defined as set forth on page 5, lines 4-27. "Releasably engaged" is defined as set forth on page 6, lines 12-19. "Fixedly secured" is defined as set forth on page 6, lines 20-24. "Line of weakness" is defined as set forth on page 7, lines 12-20. "Body panel" is defined as set forth on page 18, lines 3-7. "Nonwoven" is defined as set forth in the sentence bridging pages 19-20. Also note the first two full paragraphs on page 36, especially the first and second sentences thereof, respectively.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4, 8-9, 22-23, 25 and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis '854.

With respect to claims 1- 4 and 8-9, see claim interpretation section supra, and Davis at Figures, title, abstract, col. 3, lines 37-39, col. 6, line 33-col. 7, line 48 and col. 3, line 65-col. 4, line 26. The panel is 10 and includes nonwoven, spunbond material and elastomeric material, the line of weakness is 14 which has the claimed tensile strength(5lbf=2.27 kg = 2270 grams) With regard to 22-23, 25 and 29-30, the steps of the methods are performed during the use of the Davis absorbent garment.

Claim Rejections 35 USC 102/103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-7, 9-10, and 22-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Igaue et al GB '024.

With regard to claims 1-7 and 9-10, see claim language interpretation section supra and Igaue et al at Figures, page 2, last paragraph, page 5, last full sentence, the paragraph bridging pages 5-7 and page 9, line 17-page 11, line 2. The front panel is 1, the rear panel is 2 and is connected to the front panel by seam 8, the line of weakness is 9b, the elastomeric material is 14-15 and the fastener member is 5 and 6. The portions of the reference cited supra teach the tensile strength, i.e. the strength across the bond, of the bond areas 8 is at least 1 kg(1000g or less than 5 lbf) and that such bond lines do not tear when the lines of weakness are torn, i.e. has a greater tear strength, i.e. strength along the bond, than the cutting lines. The reference also teaches that the cutting lines are intentionally torn when desired. Therefore it is the Examiner's first position that the cutting lines also, at the very most, explicitly have a tensile strength at least that of the bonding lines because the cutting lines are also not broken when subjected to the same tensile forces during use as a pants type diaper, i.e. no separation occurs similar to bonds 8. It is the Examiner's second position that there is sufficient factual basis, at the very least, see discussion supra, for one to conclude that the structure of Igaue et al includes the claimed tensile strength because the line of weakness is parallel to the bond lines and thus would be subjected to the same tensile forces as the bonds yet, like bonds 8, do not tear during use. The Examiner's third position is that even if not explicit or inherent in the teachings of Igaue et al, to make the tensile strength of the line of weakness at least the same as that of the bond lines, i.e. at least 1 kg, would have been obvious to one of ordinary skill in the art because such would prevent the unintentional separation of the side portions during normal forces to which the pants type diaper is subjected during use and the desire of Igaue et al to prevent unintentional separation. With

regard to claims 22-30, the steps of the method are performed during use of the Igaue et al device.

Claim Rejections - 35 USC § 103

12. Claims 11-21 and 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al GB '024 in view of Kao PCT '656.

With regard to claims 11-21, see discussion of Igaue et al supra. As set forth supra, it is disclosed or obvious that the device is intended to maintain its pant like shape until the user desires to tear the device along the cutting lines or lines of weakness 9b either to define an open type diaper prior to use or to remove a pants type diaper after use in a easy manner. Applicants claim a specific tear strength while Igaue et al does not disclose such. However, Kao PCT '656 discloses that a line along which a pants type diaper is torn open which requires a tear force of more than 3000gf or 3 kg or less than 1000gf or 1 kg, i.e. includes less than about 3 lbf, would be difficult to manually tear or tear unintentionally. See, e.g., Figure 5 and page 15, first three full paragraphs thereof. Therefore, to make the tear strength of the line of weakness also less than about 3 lbf as taught by Kao on the Igaue et al device, if not already, would be obvious to one of ordinary skill in the art in view a of the recognition that such a force would permit intentional easy manual tearing of a line along which a pants type diaper is torn and the desire of Igaue et al to easily open the pants type diaper manually along line 9b. With regard to the method claims 31-40, the steps of theses claims are necessarily be performed during the use of the modified Igaue et al device.

13. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al or Igaue et al and Kao as applied to claims 1 and 17 above, and further in view of Davis '854.

Applicant claims a nonwoven panel of the spunbond type while Igaue et al and Kao only teach nonwoven panels. However, see Davis, col. 3, lines 37-45, i.e. interchangeability of spunbond nonwoven for nonwoven of synthetic fiber, cellulosic fiber or a combination thereof. To make the nonwoven of Igaue et al a spunbond nonwoven would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Davis.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that the EP '728 reference cited by Applicant also disclose at page 12, lines 28-33 that a force of 2000 g is suitable to provide a tear away seam but strong enough to hold the garment together. The remainder of the references teach lines of weakness and/or strengths.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

K. M. Reichle

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR